

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JAVONNTA SIMMONS,

Plaintiff,

-VS-

CITY OF ROCHESTER, THOMAS S. RICHARDS, Individually and in his official capacity as Mayor of the City of Rochester, and JAMES M. SHEPPARD, Individually and in his official capacity as Police Chief of the City of Rochester,

Defendants.

DECISION AND ORDER

12-CV-6705-CJS

APPEARANCES

For Plaintiff:

Wynn L. Bowman, Esq.
Westminster Financial LLC
350 Linden Oaks
Rochester, NY 14625
(585) 383-4604

For Defendants:

Adam M. Clark, Esq.
City of Rochester
Law Department
City Hall, Room 400-A
30 Church Street
Rochester, NY 14614-1295
(585) 428-6699

Siragusa, J. This is an action brought by Plaintiff Javonnta Simmons against the City of Rochester, Thomas S. Richards individually and as the Mayor of the City of Rochester and James M. Shepard individually and as the Police Chief of the City of Rochester. Plaintiff alleges discriminatory conduct in violation of her First and Four-

teenth Amendment rights pursuant to 42 U.S.C § 1983. Plaintiff further alleges the City of Rochester's Abatement of Nuisances Law is discriminatory in nature and therefore a direct violation of the Fair Housing Amendments Act, 42 U.S.C §§ 3601-19. Before the Court is Defendants' Motion to Dismiss, Mar. 4, 2013, ECF No. 6. At oral argument on September 6, 2013, the Court informed the parties that it would consider the motion as one for summary judgment pursuant to Federal Rule of Civil Procedure 12(d), and would issue a scheduling order permitting discovery and further briefing.

Pursuant to Federal Rule of Civil Procedure 16(b), on September 10, 2013, ECF No. 13, the Court issued a scheduling order with the following dates set: Discovery to be completed by 1/6/2014. Motions due by 3/7/2014. Responses due by 5/6/2014. Oral Argument set for 5/15/2014 02:00 PM before Hon. Charles J. Siragusa. In accordance with the mandates of Rule 16(b)(3)(A), the Court sets the following further deadlines: any motion to join other parties or amend the complaint must be made by March 7, 2014, with responses due by May 6, 2014, and oral argument set for March 15, 2014. The parties are cautioned that this schedule "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4).

To clarify the status of the pending motion, the Court considers it to be a motion made pursuant to Federal Rule of Civil Procedure 56. Consequently, it has permitted further time for discovery and set a date for motions. The due date for motions is the date by which the parties will also comply with L.R. Civ. P. 56¹ (requiring the filing of statements of fact), or substitute a motion, or motions, for the one currently pending, also in compliance with Federal Rule of Civil Procedure 56 and L.R. Civ. P. 56. The Court

¹ The Court's local rules of civil procedure are available in the Clerk's Office, and at the Court's website at: <http://www.nywd.uscourts.gov/rules-individual-local-federal>.

will not issue a decision on the pending motion, ECF No. 6, until after oral argument, presently scheduled for May 15, 2014.

IT IS SO ORDERED.

DATED: December 10, 2013
Rochester, New York

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge